

HABEAS CORPUS CASES IN SUPREME COURT

The Constitution and
The Flag Much
Talked Of.

DOLE AND DAVIS WAX ELOQUENT

THE QUESTION OF THE RIGHT
OF APPEAL IS FIRST
CONSIDERED.

Dole Claims That Constitution Left
First Ten Amendments Home
When It Came to Hawaii—Frank
Pahia Case Argued.

The Judiciary building walls re-
verberated the eloquence of learned
attorneys, pro and con, in the habeas
corpus cases yesterday morning and
afternoon, these cases being taken up
by the Supreme Court at the special
session which was begun at ten
o'clock.

While the Star Spangled Banner,
which was hoisted over these islands
three years ago yesterday, was waving
unconcernedly over the court
house the Supreme Court of the Ter-
ritory of Hawaii was sitting beneath
its glorious folds listening to the argu-
ments of two orators, one of whom
believes in the Constitution of the
United States and that it came here
on August 12, 1898, in the same pack-
age with the flag, while the other, to
judge by his arguments, wouldn't
know the Constitution if he saw it
chasing the flag through the streets
of Honolulu.

The flag waved on overhead while
Attorney George A. Davis delivered
what sounded like one of the finest
Fourth of July orations ever given
and Attorney General E. P. Dole gave
voice to an impassioned appeal against
"throwing open wide the prison doors
and flooding the community with de-
spite criminals."

The one reminded Their Honors of
the fact that this is a Territory of the
United States of America, while the
other declared that if he could not win
his case on one technical point of the
law he would appeal it on some other
point.

Attorney General Dole is bound to
get the habeas corpus cases before the
Supreme Court for review on appeal
from Judge Gear's recent decision.

The "transition period" plays a big
part in the present cases. The points
involved affect the prisoners who were
convicted during that period of in-
famous crimes without indictment by
a grand jury and on a verdict of less
than twelve trial jurors.

When Judge Gear gave a number
of these prisoners their liberty on
writs of habeas corpus he ruled upon
the basis that, inasmuch as only those
laws of Hawaii which were not con-
trary to the Constitution of the United
States were continued in force by the
Newlands Resolution, the imprison-
ment of these men on verdicts of
juries which were less than unanimous
was illegal, as it was in direct opposi-
tion to the constitution which requires
a unanimous verdict.

The Attorney General appealed at
once but his appeal was ignored by
Judge Gear. It was to consider this
appeal of the Attorney General and
the income tax cases that the special
session of the Supreme Court was
called.

The argument in the habeas corpus
cases was opened yesterday morning
by Attorney General Dole, who held
forth for over an hour and a half.
Dole spoke on the right to appeal. He
declared that in all the higher courts
the habeas corpus proceeding is a
civil and not a criminal proceeding.
He said that it was a civil process
brought by a prisoner to secure a
right which may be in jeopardy from
a criminal prosecution, citing several
cases from States where the right of
appeal is granted by statute. The
Attorney General claimed that the
right of appeal on the part of the Ter-
ritory in the present cases was clearly
given in the civil laws of 1897, sec-
tions 1432 and 1434, which say that
"appeals shall be allowed from all
decisions, orders and judgments, etc.,"
and "nothing herein contained shall
be construed to permit an appeal to
be taken from any order by any judge

or magistrate allowing any warrant,
writ or other process, or for any other
order of like nature."

"If the order of a circuit judge, sit-
ting in chambers," said Dole, "is not
appealable, every convicted person
in the Territory may apply for dis-
charge on habeas corpus, to every
Circuit Judge in the Territory having
jurisdiction; and if they can find a
single judge who will hold that the
convictions were illegal, the law is
nullified and the prisons are empty.
Under such circumstances the public
can have no protection save in lynch
law. A man is tried for murder. A
jury finds him guilty. The rulings of
the judge are sustained by the Su-
preme court. The man is sentenced to
be hanged. The condemned crim-
inal applies for a writ of habeas cor-
pus. A circuit judge, sitting in cham-
bers, says that the whole proceedings
are void, and orders the prisoner to
go free."

He said that no construction of the
law quoted could make it read "ex-
cept orders of discharge on habeas
corpus."

Attorney General Dole went on to
paint a vivid picture of the terrible
state of affairs which would exist in
this country should the gates of the
prisons be opened and the criminals
turned loose to repeat their crimes,
perhaps. He spoke of the reign of
anarchy which would result and plead-
ed that the community would be un-
able to protect itself without resorting
to lynch law.

After thoroughly going over the ap-
pel side of the question the Attorney
General commenced to talk on the
Constitution and began to argue as to
the legality of the convictions. He
claimed that the Constitution came to
Hawaii with the Newlands Resolution
minus the first ten amendments. He
said that the De Lima case recently
decided by the Supreme Court of the
United States, merely referred to
territory matters and not to questions of
life or liberty.

One of the most interesting state-
ments of the Attorney General was
that inasmuch as Hawaii had once
been a sovereign independent nation
she was entitled to be considered in
a quasi-independent state between an-
nexation and the organization of the
Territory.

After thus defining the "transition
period" the Attorney General referred
to the Marshall and Edwards cases,
saying that these were antagonistic
by accident only.

A startling statement was made by
the Attorney General when he declar-
ed that any state, if it so desired,
might abolish trial by jury altogether.
He said, in part: "To hold that pre-
sentment by grand juries and unani-
mous verdicts (not sanctioned by the
laws of the Republic of Hawaii) were
indispensable during what the Su-
preme Court of Hawaii and, in effect,
Chief Justice Marshall and the Su-
preme Court of the United States,
have termed the transition period, is
to hold that for about two years there
was absolutely no legal machinery in
these islands for the protection of life,
liberty or property from any grade of
crime punishable by imprisonment at
hard labor exceeding one year; it is
to hold that law was dead or sleeping
and that the only protection from mur-
der, outrage and pillage was an appeal
to Judge Lynch. Neither Congress nor
President McKinley intended such a
condition as this, but the reverse."

Deputy Cathcart followed the At-
torney General, speaking on the Hawai-
an statute allowing appeals.

Attorney George A. Davis, who is
assisting Attorney F. M. Brooks in
behalf of the prisoners, commenced to
talk a little before noon, saying that
there were three questions to argue,
namely: May the Territory appeal?
If so, how? And, if it may appeal,
was the lower court right or wrong?
He then read from Church, on habeas
corpus, who says: "The right of ap-
pel in habeas corpus is repudiated and
denied by all the ablest jurists in the
country."

Davis continued talking long into
the afternoon session. He was elo-
quent and gesticulative in his argu-
ments and his speech, judging by the
way it sparked all the way through
with patriotic expressions, sounded
more like a Fourth of July oration
than an argument. The argument was
there, however, and when the able
attorney had finished his appeal for
American law and American principles
he had not only exhausted all patri-
otic expressions but he had referred
to fifteen or twenty volumes of the
law.

Davis had never heard of such a
thing as an appeal in habeas corpus.
(Continued on Fifth Page.)

ATMOSPHERE AGITATED BY CRIMSON CHORUS

Chinese With Burning
Ambition Falls
From Grace.

JOYOUS JINKS AT MALLO PLACE

KORK HIM'S ATTEMPT AT DECOR-
ATION OF PUI FEATURES
SUCCESSFUL.

Gandali Charged With Larceny of a
Bicycle Committed to Circuit
Court For Trial—Vagrants Vacat-
ed Honolulu.

The police department are quietly
speculating upon the nature of the de-
coration imbibed by one W. Hung Fook
which resulted in engendering a burn-
ing desire within the proud breast of
the Celestial to lead the peaceful and
uneventful life of a policeman.

False impersonation was the charge
which was inscribed opposite the name
of W. Hung Fook when he lined up
with the motley array before Judge
Wilcox at Police Court yesterday mor-
ning. Fook's difficulty lay in the fact
that he attempted to cast a lurid spell
of fear and trembling over a bunch of
fellow-countrymen Saturday night by
masquerading about as a jolly itine-
rant in the ranks of "Honolulu's Fin-
est."

His disguise went very well for a
time. But when it became necessary
for a display of family and official an-
tecedents, W. Hung Fook was not on
hand with the goods. He was shy the
required commission. His bluff was
called and the luckless individual was
given the hearty kiki by the Chinese
he was attempting to arrest, upon a
somewhat hazy charge of general dis-
obedience. Communication with the
police station was established and a
bluecoat—the genuine article—went
to the scene and put the finishing
touches to the downfall of the imita-
tion. Fook found repose in the cooler
throughout a peaceful Sabbath day in
Honolulu. The defendant was also al-
leged to have had a deadly weapon in
his possession while attempting to run
his bluff. Awaiting Fook's explanation,
a postponement was granted until this
morning.

The departure of the transport Kil-
patrick yesterday morning caused the
removal of two gentlemen named Mo-
rarty and Nugent who had been de-
corated upon the court ledger as va-
grants. Their finding jobs which caus-
ed their departure seemed satisfactory
to the court. The incident was there-
fore considered closed.

To Luna Gandali all bicycles looked
alike. It was alleged that the young
man espied the wheel of Secretary
Brown of the Y. M. C. A. standing
in a convenient nook, mounted the
rubber-shod steed and bowled away,
leaving Mr. Brown to ponder over the
wickedness of a perverse populace.
The Y. M. C. A. leader declined to
bid good bye to his bike without mak-
ing an effort for its recovery. After a
season of quiet reflection and a few
Sherlock Holmes deductions, Gandali
was nabbed as a probable purloiner of
the bicycle. At the preliminary hear-
ing yesterday morning, the defendant
was committed to the Circuit Court for
trial.

It did not take Deputy Chillingworth
and his scouts very long to discover
the fact they had not made unexpected
entry into a Chinese mission school in
active operation when they invaded
the premises of a Pauoa valley Ori-
ental rancher early on Sunday morn-
ing. On every hand there were evi-
dences of pakapao and other gambling
games. Doors and windows were care-
fully guarded and no guilty man was
allowed to escape. When noses were
counted, fourteen responded to the
breakfast bell at police station yester-
day morning. Each pleaded guilty to
the charge and a fine of \$10 with one
dollar costs was charged up in
each case.

A crimson chorus agitated the at-
mosphere in the vicinity of Relief
Camp No. 2 early Sunday morning.
The work of swipes consumption was
moving along at a merry pace until the
Chillingworth sleuths bore in sight.
One place, notorious in police circles,
was visited and several arrests were
made. S. K. Malno seemed to be the
presiding genius in charge of the joy-

ous jinks. Malno was charged with
selling liquor without a license. His
case was carried over until today.

Buck Buchanan was fined \$10 for
being present at the exhibition of roll-
ing bones recently held at St. Germa-
nia billiard rooms.

Ah Hoy caught a \$15 fine for gam-
bling. He never whimpered.
Kork Him, a Chinese laboring under
such a pugilistic cognomen, was charg-
ed with assault on Sick Pul. While
Kork Him might have been somewhat
misnamed, Pul was a pretty sick-look-
ing individual when he appeared to
bear witness against his assailant. His
physiognomy was about as featureless
as a dish of mashed potatoes, on ac-
count of the conflict. A postponement
was granted.

Sadie Muller and Manuel Phillips
were arraigned for selling liquor with-
out a license. The case was postponed
until Wednesday.

The charge of adultery was prefer-
red against W. E. Terwilliger, Becky
Kalaukela and Ant. Pierres. Upon the
request of attorneys the case was pos-
tponed until Thursday morning.

A half dozen drunks representing
many nationalities were gathered to-
gether in anti soft drink conclave in
police docket. The regulation fines
settled their respective cases.

POLICE FLING DEFIANCE AT CUSTOM HOUSE OFFICIALS

Would Try Conclusions on Baseball
Diamond for Badge of Supremacy
—Anxiously Await an Acceptance.

The victory of the Police baseball
nine on the Makiki diamond Saturday
afternoon has had a decidedly stimu-
lating effect upon that gentlemanly
aggregation of ball tossers. Not con-
tent with wiping up the earth with
their opponents, the Artillery base-
ballists, Captain Chillingworth is now
seeking new fields to conquer. The
latest is a deft which was thrown
down to the Custom House nine yester-
day afternoon.

There are some who are equal
enough to insinuate that Chilling-
worth's men will yet see their finish,
and it will not be done in oil, nor
will it be encircled with a gilt frame.
Here is the challenge:

Honolulu, Oahu, Aug. 12, 1901.
A. M. Nowell, Esq., Captain of the
Custom House Baseball Team,
Honolulu.

Dear Sir:—On behalf of the Police
team I do hereby respectfully chal-
lenge your team to a friendly game
of ball to take place at either the
Punahou campus or at the Makiki
Recreation Grounds.

Any day satisfactory to you will be
agreeable to the Police team.

Yours truly,
CHAS. F. CHILLINGWORTH,
Captain Police Baseball Team.

HARMONY'S BIRTHDAY.

Lodge of Odd Fellows to Celebrate
Twenty-first Anniversary.

Harmony Lodge of Odd Fellows will
become of age this year. The anniv-
ersary falls in the month of October.
Already preparations are being made
for a grand celebration of the very im-
portant event. A career of twenty-one
years, with the attendant enviable
record which the lodge has at its
back, is a matter which calls for
wholesome felicitation upon the part
of the aggressive membership.

To set the ball to rolling aright, a
quiet but effective canvass has been
made among the three link followers
in the city. At this early date the
prospect for ample funds to carry out
a modest celebration are most gratify-
ing. A committee of two is appointed
each week to conduct a financial
gleaning of the local field.

The silver jewels to be devoted to
the anniversary ceremonies have been
purchased. Steps will be taken within
a short time to prepare a birthday
program.

Rapid Transit Connection.

A gang was working like beavers
yesterday laying the rails across the
steel bridge over Nuuanu stream. This
closes that gap between Hotel and
Liliha street so far as rails are con-
cerned. The trolley wires are not
yet strung along King street, but that
work ought not to take long.

Took Second Degree.

At a meeting of Harmony Lodge of
Odd Fellows held yesterday evening
four candidates were successfully in-
serted through the routine of the sec-
ond degree. Those who made the goal
were W. F. Story, C. A. McDonald,
J. D. Bicknell and F. H. Kilbey.

COURT ADJOURNS IN HONOR OF OLD GLORY

Judge Gear Discourses
on the Raising
of the Flag.

RECOMMENDS A REGULAR HOLIDAY

JURORS ADVISED TO STUDY THE
CONSTITUTION OF THE
UNITED STATES.

Special Term of the Supreme Court
Begins—Eleven Appeals From
Wilcox—Three More Answers in
Pearl City Suits.

In honor of the annexation of the
Hawaiian Islands to the United States,
in honor of the raising of the Stars
and Stripes over Hawaii nei, yesterday
being the third anniversary of the
ceremonies which were the outward
and visible signs of the annexation of
these islands, Judge Gear of the First
Circuit Court, after the calling of the
criminal calendar, adjourned court un-
til this morning.

In adjourning for the day Judge
Gear addressed the jury as follows:
Gentlemen of the jury: Three years
ago today the American flag was rais-
ed over these islands, and what was
known as Flag-Raising Day was in-
augurated. The following year the
day was observed by the government,
all government offices being closed.
Last year the day fell on Sunday and
no notice was taken of it. The Court
believes it was a good idea. Some one
has marked on my calendar "Flag-
Raising Day." The Court feels that
it is a day that should be generally
observed.

People are all too prone to forget
that the American flag waves here, and
that when it went up we were entitled
to all the liberties and the benefits ac-
corded American citizens. It made
those who were Hawaiians Americans,
and conferred upon them the birth-
right of American citizens. This court
deems it proper and fitting that the
anniversary of the flag raising.
All minor matters having been dis-
posed of that will be done.

In one way the Court is sorry that
it will not be able to proceed with the
Love case and the Sister Albertina
case, both of which cases are in pro-
gress and witnesses present, but, as the
Court remarks, it deems it proper and
fitting to adjourn today.

Three years ago for the first time,
and for all time to come let us hope,
America's national anthem arose over
these islands. If any of the jurors
have a few hours to spare today the
Court would suggest that no better
way to spend them could be found
than by studying the Constitution of
the United States, which is something
we should all know, and which at that
time, if not before, abrogated and an-
nulled all laws inconsistent with the
Constitution of the United States.

The Court takes great pleasure in
being able to adjourn this court at this
time because of its being the anniv-
ersary of Flag-Raising Day. The Court
had the pleasure of being present at
that time, and saw many tears as well
as much rejoicing. The Court does
not know why there should not be the
same rejoicing today. Perhaps the
American flag coming here has injur-
ed matters as far as our being able
to keep laborers under contracts and
has not had the effect that some sup-
posed it would have, but despite this
I do not believe there is anyone but
what is glad we are a part of the
United States, and that those who
were not before Americans, became
such by the act of annexation.

It is a great and glorious thing to
think of, and to feel that we have the
most beautiful emblem, the Stars and
Stripes, floating over us today. There-
fore this Court will adjourn until 3:30
tomorrow morning.

After court had been adjourned
Judge Gear called in the grand jury
and delivered the following remarks to
the jurors.

Gentlemen of the Grand Jury: The
Court had occasion a few moments
ago to refer to the fact that today is
the anniversary of Flag-Raising Day,
the day known as Territorial Day or
Flag-Raising Day. Two years ago on
the anniversary of this day all Govern-
ment offices were closed. Today I

have deemed it fitting and proper, un-
der the circumstances, to keep up that
custom, which was not kept up last
year, the day falling on Sunday. I
have not observed any order from the
Government offices to this effect, but
this Court, as it has remarked, deems
it fitting and proper, this being the
anniversary of the day on which we
were admitted into the United States,
that we should adjourn.

On that day all Hawaiian-born were
changed from Hawaiians to Ameri-
cans and given the full rights of
American citizens, of claiming Ameri-
ca as their land, and of having the
right to be called Americans. While
they have not lost their aloha for their
old flag, it is hoped they have acquired
a love for the American flag, which
means more to them than was
thought. It means that every one of
us, from the lowest to the highest,
whether Chinese, Japanese or of what
nationality, when the flag was raised
were entitled to all of the benefits de-
rived from being citizens of the United
States. It was a great and glorious
thing for every one here.

This Court has had the pleasure of
deciding in cases brought before it
that was the right of every person
here on the 12th day of August. The
day should be celebrated and there is
no reason why it should not be cele-
brated every year, and the Court
wishes to keep in the minds and
hearts of all that it is the flag of all
of us, that it is our flag, to be revered
and loved. As the Court stated to the
other jurors, if any of the grand jurors
have leisure time today on their
hands it would be fitting for them to
read the Constitution of the United
States and find out the privileges that
we are all entitled to under it, and
that no man's liberty can be taken
without due process of law, and that
every defendant is entitled to a jury
trial, and that we are all entitled to all
of the benefits which any American
receives under the Constitution. So,
gentlemen of the grand jury, I deem
it proper to excuse you for the day
and until tomorrow morning at 10
o'clock, your usual hour of convening,
and the Court takes great pleasure in
doing so. I trust it will cause all of
you to think more of the American
flag and of American institutions.

When the criminal cases were called
before Judge Gear yesterday morning
the following cases were set for trial
on Monday next: Ancion, larceny;
W. H. Thorne, assault with weapon;
Mismun, vagrancy; Matsuo, procuring;
Manuel Souza, selling liquor without
license; Ah Fong, assault and battery;
Kawamoto, selling adulterated food;
Ah Soon, obstructing justice; Antone
Richard, Jr., selling adulterated food.

Eleven appeals from convictions in
the police court were filed yesterday
morning, to be added to the calendar
of the First Circuit Court. The ap-
peals are in the following cases:

Albert Peyser, two charges of gross
cheat, six months each conviction.
L. K. Otis vs. Lok Kean, unlawful
trespass by night; six months.
Maria Walms, selling liquor with-
out a license; \$100 fine.
Wada, assault and battery; \$10 fine.
Emil Tschumi, assault and battery
on John Piver; \$50 fine.
Sing Chock and Chin Lum, assault
and battery on Ami Kaina; \$10 each.
Thomas Metcalf, assault and battery
on Sidney Smith; \$25.
Wong Pau, Chin Nun, Lau Nin, Lau
Look, assault and battery on Lee
Koon; \$10 each.
Oliwa Kane, heedless driving; \$25.
Mrs. Monwar, assault and battery;
\$50.

Henry Paulo, common nuisance two
months.
At 10 o'clock yesterday morning the
special term of the Supreme Court be-
gan, Chief Justice Frear announcing
that after the habeas corpus matters
had been argued the court would ad-
journ for the week. Other matters
will be taken up later, perhaps.

Besides the habeas corpus cases the
following cases are on the calendar:
G. H. Robertson vs. J. W. Pratt, As-
sessor. Submission on agreed facts.
Hartwell, Smith and Lewis for plain-
tiff, Robertson & Wilder for defendant.
Waimea Sugar Mill Co. vs. J. W.
Pratt, assessor. Submission on agreed
facts. Hartwell, Smith and Lewis for
plaintiff, Robertson & Wilder for de-
fendant.

Volcano S. & T. Co. vs. Hayashi et
al., error to Circuit Court, Fourth Cir-
cuit. Wise & Nickes for plaintiff in
error, Smith & Parsons for defendant
in error.
C. D. Pringle vs. Hilo Mercantile Co.,
error to Circuit Court, Fourth Circuit.
Bitting for plaintiff in error, Wise &
Nickes for defendant in error.

Territory of Hawaii vs. Liliuokalani
et al., appeal from Circuit Judge, First
Circuit. Attorney-General and Baird

(Continued on Eighth Page.)

THE BUSINESS MEN AND CABLE QUESTION

Ought a Delegation Be
Sent to Influence
Congress?

ASK THE CHAMBER OF COMMERCE

THE MATTER MAY COME UP AT
ANNUAL MEETING ON
WEDNESDAY.

Mr. Irwin Says Mr. Strymser Would
Would Have Laid Cable If Allow-
ed—Strange Latitude of the Paci-
fic Coast—Duty of Government.

Following up the interview with Sen-
ator Perkins of California published in
The Republican, a reported of this
paper questioned business men casual-
ly met in the street yesterday with
regard to that gentleman's advice. It
will be remembered that Senator Per-
kins expressed the opinion that the
business men of Honolulu, through
their organizations, ought to send a
delegation to Washington at next ses-
sion of Congress, to urge the immedi-
ate laying of a cable between San
Francisco and Honolulu as a Govern-
ment work.

Will E. Fisher said: "Unquestion-
ably, the United States Government
ought to lay the cable. It would be
too much altogether to expect a corpo-
ration of Honolulu business men to
undertake a work of such magnitude.
They have built up a flourishing town
and port here. The United States has
annexed the country with its many
advantages and some disadvantages,
among the latter being the lack of tele-
graphic communication with the main-
land. It is the duty as well as the
interest of the Federal Government,
with Army and Navy stations here, to
remove this particular disadvantage."

Fred W. Macfarlane, president of
the Merchants' Association and a
member of the Chamber of Commerce,
had not considered the question as
between a Government and a private
cable. Still he thought it was a neces-
sity to the Federal Government to
have a cable. As to whether this com-
munity should make a special repre-
sentation to Congress on the matter,
Mr. Macfarlane preferred not to speak
without due reflection.

"Would it not be better," he asked
the interviewer, "for you to see Mr.
Allen, president of the Chamber of
Commerce, and ask him if this ques-
tion could not be specially laid before
the Chamber for discussion, instead of
your going round to obtain the views
of business men individually? Then
you could obtain the opinion of the
leading business men as a body."

It happened to be easy to take this
advice, for Mr. Allen was met directly
afterward. The president of the Cham-
ber of Commerce said the annual
meeting was to be held on Wednes-
day, when there would be an opportu-
nity of discussing the matter if anyone
chose to present it.

W. G. Irwin, who had been interest-
ed through his New York connections
in the Strymser cable proposal laid
before Congress, said:

"The trouble was that the Washing-
ton authorities would not let anyone
else lay a cable and would do nothing
themselves. Mr. Strymser would
have done it if he had been allowed.
He was in with Mr. Morgan, who stood
ready to put up the money."

"The people on this side—on the Pa-
cific Coast—have been rather queer
on this subject," Mr. Irwin added.
"There has been cable communication
across the Atlantic for thirty-five
years now, yet San Francisco with its
great commerce is still without a
cable to any point in the Pacific—not
even to the Farallones."

Taro Supply Improved.

While there has been no material
increase in the amount of taro fur-
nished at the leper settlement on Mo-
lokal, the supply within the last few
weeks has come almost entirely from
the patches under cultivation near
Kalaupapa, whereas before a greater
portion was received from planters on
the other islands, in which case the
matter of transportation was found to
be an essential factor. The Board of
Health hopes soon to have made con-
tracts with Molokai planters for the
required rations of paia, sufficient for
any emergency.